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6 IN THE UNITED STATES DISTRICT COURT
7
8 FOR THE NORTHERN DISTRICT OF CALIFORNIA
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10 JOHN MICHAEL BALBO,

No. C 08-0159 WHA (PR)

11 Petitioner,

ORDER OF TRANSFER

12 vs.

13 JAMES E. TILTON, Warden, et al.,

14 Respondents.
15 _____/

16 Petitioner opened this case by filing a document on the court's form for habeas corpus
17 petitions. Despite the habeas form, petitioner says his claim goes to conditions of confinement;
18 on the other hand, he also asks for release as a part of the relief requested. Whether the case is
19 properly a habeas case or a civil rights case does not affect the outcome here, however, because
20 whichever it is, it must be transferred to the United States District Court for the Eastern District
21 of California.


22 If the filing is treated as a habeas petition, venue is proper in the district of conviction or
23 the district when the petitioner is confined. *See* 28 U.S.C. § 2241(d). The district of
24 confinement is the preferable forum to review the execution of a sentence, however. Habeas
25 L.R. 2254-3(a); *Dunne v. Henman*, 875 F.2d 244, 249 (9th Cir. 1989). If this is a habeas case,
26 the claim is that conditions in the prison are so bad that petitioner should be released, which
27 goes to execution of the sentence, so venue would preferably be in the Eastern District. If this
28 is a civil rights case, venue also is in the Eastern District, because the defendants are to be

1 found there and the claims arose there. *See* 28 U.S.C. § 1391(b).

2 For these reasons, this case is **TRANSFERRED** to the United States District Court for the
3 Eastern District of California.

4 **IT IS SO ORDERED.**

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6 Dated: January 17, 2008.



WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE